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APPENDIX TO BRIEF OF APPELLEES

In the
UNITED STATES COURT OF APPEALS
for the Fourth Circuit

No. 7430

THE SCHOOL BOARD OF THE CITY OF NEWPORT NEWS, ET AL.,
Appellants,

v.

JEROME A. ATKINS, ET AL.,
Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, Newport News Division

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EXCERPTS OF TESTIMONY

(tr. 9) S. D. GREEN, SWORN

DIRECT EXAMINATION BY MR. THOMPSON:

Q. Please state your name, sir.
A. S. D. Green.

Q. What is your business or occupation?

A. Clerk of the school board.

Q. The City of Newport News?

A. Of Newport News.

Q. As such clerk is one of your duties that of taking the minutes, taking and transcribing the minutes of the regular and special school board meetings?

A. That is right.

Q. Were you present at the school board meeting on July 12, 1955?

A. Yes.

Q. Will you please turn to your record of the minutes of the proceedings at that meeting, please, sir.

A. All right.

Q. Mr. Green, does your minutes indicate that a delegation appeared before the School Board of the City of Newport News on July 12th and petitioned the school board to desegregate the public schools of the City of Newport News?

A. That is right.

Q. 1955. Does your minutes indicate what action was taken by the board with respect to petition filed by the petitioners on that occasion?

(tr. 10) A. Yes.

Q. Will you read to the Court the action taken by the board at that time.

A. There is a letter from the State Superintendent of Public Instruction setting forth certain principles enunciated by the state board. Then after that there is a motion. Shall I read the letter?

Q. No, sir. We would prefer, if you will, to read the mo-

tion and the name of the maker of the motion and the action taken by the board with respect to that.

MR. ROBERTSON: I would like for him to read the record; to read the letter.

THE COURT: It will ultimately get in anyway, Mr. Thompson. Might as well read the whole thing.

MR. THOMPSON: We have no objection to that.

A. This is Superintendent's Memo No. 3164, June 28, 1955, to The Division Superintendents from Dowell J. Howell, Superintendent of Public Instruction.

"Subject: Policy Statement by Governor Stanley and the State Board of Education.

"Below you will note the statement issued jointly by Governor Stanley and the State Board of Education at its meeting on Thursday, June 23rd.

(tr. 11) " 'The problems created by the decision of the United States Supreme Court cannot be solved suddenly. The Court recognized that those responsible may well take into account the public interest in the elimination of existing obstacles in a systematic and effective matter. The Court further recognized problems related to the administration, physical condition of the school plants, the transportation of pupils, personnel, revision of school districts, and attendance areas. Attention was directed to the possible necessity for the revision of State and local laws.

" 'Although the United States Supreme Court placed on the school authorities the responsibility for assessing and solving the problems in accord-

ance with the views expressed by the Court, the State Board of Education and the local political subdivisions cannot initiate a plan to accomplish an orderly and logical adjustment within the law until the General Assembly has enacted appropriate legislation. The State Board is of the opinion that hasty action could well result in serious damage to the public school system.

" 'It has not yet been possible for the Commission on Public Education to propose and the General Assembly to enact appropriate legislation which will enable the State Board of Education and the local school authorities to adjust to a new and different basis for the operation of public schools.

" 'Meanwhile, local school authorities are faced with the necessity of completing and formulation of plans for the coming school session.

" 'In view of these facts and circumstances, the Governor and the State Board of Education hereby declare and adopt as the policy of this Commonwealth that the State Board of Education will continue to administer its functions, in cooperation with local school authorities, to the end that the public schools of Virginia open and operate through the coming school session as heretofore.' "

"Mrs. Kritzer said she had given this matter great and serious thought and felt that she must abide by (tr. 12) her own conscience. She, therefore, moved that the school board reaffirm its action taken at the last meeting to operate the public schools of the City of Newport News on a segregated basis for the session 1955-56.

Mr. Channel seconded this motion and it passed."

Q. Mr. Green, to your knowledge has the school board taken any further action with respect to its policy of segregating pupils on the basis of race in the public schools of the City of Newport News?

A. I don't believe so.

Q. Would you refer, please, to your record for the regular session of June 14, 1955. Now, will you tell us what action was taken by the board on that date with respect to the question of desegregating the public schools of this city.

A. A petition was presented by Doctor Scott, who was a member of the board, and no action was taken on his petition.

Q. And also another statement made to the board with respect to desegregation at that meeting?

A. I don't recall such statement.

THE COURT: What was the petition presented by Doctor Scott?

THE WITNESS: Shall I read that, your Honor?

Q. We would like that statement read into the record.

THE COURT: Is that the petition that is the foundation (tr. 13) of the plaintiff's complaint?

MR. THOMPSON: No, sir. That is with respect to a recommended course of action to the school board by one of its members.

THE COURT: If you care to have it read, you may do so.

A. "Doctor Scott said, since the State Board of Educa-

tion would not meet until June 23rd, he felt that such action would seem a little premature. He then read the following statement:

" 'Mr. Chairman:

" 'On two previous occasions I have made comments which I deemed pertinent as to the attitudes and policies which we as school board members might adopt in order to facilitate the newer policies in education emanating from the recent Supreme Court decision. On each occasion you have elected to adopt a 'wait and see' attitude, dependent upon the wording of the decree to be issued by the Court and the announced policy by the State Board of Education. Much valuable time has been lost in which the groundwork for implementing the decision in our own system could have been made.

" 'We have all heard the Supreme Court denounced, individually and collectively, by those who disagreed with their decision. The impropriety and poor taste shown by such public statements need no comment. It is significant, however, that in all the comments on the decision, I have heard none suggest that the 1896 decision was itself wrong. At least that decision was not unanimous and the dissenting opinion of Justice Harlan was almost prophetic when it declared: 'Our Constitution is color blind, and neither knows nor tolerates classes among citizens. . . It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that (tr. 14) it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.'

" 'I feel these things are clear: (1) All restrictive

State laws in secondary education based on race alone are invalid. (2) The problem of effectuating integration is now a function of the individual boards. It is our legal obligation then to establish a timetable or other comparable plan to indicate an honest effort to comply. No well meaning group of citizens should require further legal compulsion to do that which we are legally and morally obligated to do. Next, it would certainly be important to point out that there is a clause in the Act of Congress by which Virginia was admitted into the Union in 1870. This Act provided that: 'The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the Constitution of the said State.'

" 'The Decree indicated that integration should be accomplished as soon as feasible. We have urgencies existing which give that clause an immediateness as to us, which some other communities may not have. In the Negro high school, conditions have been crowded beyond belief and will be worse this coming year. This and other comparable conditions make an action now on our part imperative.

" 'Many have found virtue in delaying integration at least a year There seems to be no ultimate way that integration can be legally avoided, so why not now. I am sure, however, based on your previous statements that I could not expect this ideal. In lieu of that, will you at least suggest something positive. As example, consider inviting a representative group of citizens to serve as an advisory committee to the board; consider sponsoring public forums in which each side may be presented, plan to have your teachers this fall meet in

one group. Consider these and other plans previously suggested.

" 'In summation, I should like to recall the statement of Ralph McGill, the editor of the Atlantic Constitution, who said: "Segregation is on its way out, and he who tries to tell the people otherwise does them great (tr. 15) disservice. The problem of the future is how to live with the change." I certainly trust that this board, located on the peninsula, located in an area where interracial relationships have been of the highest order for many, many years, may see fit to initiate a program based on positive action which could well be a standard by which the rest of the State could pattern its own future action. I trust that you may have the courage to act in a manner which I know your conscience must dictate.'

"No action taken on Doctor Scott's statement."

THE COURT: Was Doctor Scott white or colored?

THE WITNESS: Colored.

THE COURT: Was he at the time the only colored member of the school board?

THE WITNESS: That is right.

Q. Are the public schools for the City of Newport News presently being operated on a racially segregated basis?

A. They are.

THE COURT: Have you received any further instructions from Doctor Howell, Superintendent of State Board of Education—I believe that is his title?

THE WITNESS: That is right.

THE COURT: Since the bulletin that was sent to you on June 28, 1955?

THE WITNESS: No, I have not.

Q. (By Mr. Thompson) Has the board to your knowledge, Mr. Green, made any plans for eventual desegregation of the public schools of this city?

(tr. 16) A. Not to my knowledge.

Q. If any have been made would you know about them?

A. If it had been in a public meeting I would have.

MR. THOMPSON: That is all, sir.

MR. ROBERTSON: No questions.

* * *

(tr. 48) * * * R. O. NELSON * * *

Q. Doctor Nelson, if desegregation of the public schools should be ordered by this Court at this time what in your opinion, if you know, would be the effect upon the requirements and the use of the present school buildings for Negroes and whites?

A. Well, of course I don't know. I can merely express an opinion.

Q. You are an expert educator in charge of the school system of Newport News, so I will ask you to do so.

MR. HILL: I object on that basis, your Honor. I don't think he is qualified.

BY THE COURT:

Q. Doctor Nelson, have you made a study of the situa-

tion from a geographical standpoint to determine, according to the map that has been introduced into evidence, how many Negro children would be brought into what has heretofore been a school reserved to white and vice versa?

(tr. 49) A. Well, just privately, Judge. I haven't presented anything to anybody because I don't know on what basis the school board would organize the school system. If you resort to zoning, you would have one thing. If you call the whole city one attendance area, you would have another. So I just don't know.

Q. You have certain geographical districts set up now, do you not, where a child is assigned to a certain school largely by reason of geographical allocations?

A. Yes; it's very elastic, though. We say to a child, "Go to any school you want to go to. If we have got room we will take you."

Q. I understand that. But, basically, if I have a child living in such and such an area, that child is going to such and such a school?

A. That is correct.

Q. Have you attempted by using the present system that you now have to reallocate the pupils in any manner if desegregation occurred?

A. Yes, for my own use.

Q. If you want to give those results.

A. We have two white schools under ordinary zoning would remain white schools. We have three that would become mixed schools. One I would say would become a pre-

(tr. 50) dominantly Negro school.

Q. How many Negroes do you think would be in the other two white schools?

A. In one of the white schools involved there are 200

white children there now. The number of Negro children might run 40 or thereabouts.

MR. HILL: I didn't get your last response.

THE WITNESS: Might run 40 in the small schools that now houses 200 white pupils.

* * *

(tr. 65) * * * Q. What have you, Doctor Nelson, or your school board in an official capacity done in the city of Newport News since 1954 to develope a favorable climate for the desegregation of schools, if anything?

A. Well, I don't know what the school board has done as individuals.

Q. Officially.

A. By "officially" you mean in school board meetings? (tr. 66) I would say we have taken no action at all that would develop a favorable climate except to administer the best system of schools we know how to administer in the the best possible way.

Q. But officially the administration has done nothing?

A. That is right.

* * *

(tr. 90) * * * PHILIP W. MURRAY * * *

BY THE COURT:

Q. Mr. Murray, let me ask you a question. The buses that operate in this community now in Newport News in this area—I don't know what company has it.

A. Peninsula—Tri-Transit. It's privately owned, Judge.

Q. I assume that they do not adhere any longer to what in known as the Jim Crow law in Virginia?

A. That is right. But I don't ride the buses much.

Q. What incidents if any, have you heard of since the doing away of that Jim Crow law, which is still on the books in Virginia, but what incidents have you heard of trouble between the races?

(tr. 91) A. I have been told that the colored people are largely following the prior practice of being seated as they were before.

Q. What makes you think that the colored school children might not desire to follow the same practice with respect to voluntary segregation as distinguished from—

A. Judge, I wish I might hope that. But I think that there is being too much extra-curricular force applied from without.

Q. Well, that may be true. But going back to the bus situation, isn't it true that while the Jim Crow law was in effect in Virginia that your police court usually had probably four or five cases a week involving disorderly conduct on buses or failure to adhere to that Jim Crow law? Isn't that true?

A. No, sir, there were very few cases of that sort in Newport News. Very few.

Q. Maybe they all clogged up in Norfolk then.

A. I think there has been in Newport News comparatively little argument and fussing with reference to the buses. Mighty few.

* * *

(tr. 93) * * * Q. What is the compelling factor, then, in

the Newport News situation that leads you to your conclusions?

A. I think that in the State of Virginia that the State Board of Education is the level to which we have to comply and conform with in the administration and operation of the school system in Virginia.

Q. Is it fair then that your position is that if the State Board of Education changed its view then you would have no difficulty in Newport News?

A. I haven't said we wouldn't have any difficulty, but I think that that is the first thing that has to be done for us to take definite steps in connection with the matter.

(tr. 94) Q. Let me ask you this: Have you—I am not talking about you; I am talking about your school board—have you done anything of an official nature to develop a climate of acceptancy in Newport News?

A. We have not.

Q. Have you done anything to assist in this climate of hostility to the decision?

A. We have awaited instructions and directions from the State Board of Education.

Q. No, sir, that wasn't my question. My question was: Have you as the school board done anything to help generate this spirit of hostility to the decision concerning desegregation?

A. We haven't taken any leadership in undertaking to counteract what seems to be the very determined prevailing opinion of the white population.

Q. You still haven't answered my question, sir.

A. I think I have.

Q. Sir?

A. I think I have.

Q. Maybe you didn't understand it, I don't know. My question was just the opposite. Not whether you had done anything to counteract the situation, whether you had done anything to help promote it.

A. Well, I have just answered and said that we have not. (tr. 95) Q. As a member of the school board did you not take an oath, the first part of which says you would defend the laws of the United States and the Constitution thereof?

JUDGE ALMOND: If your Honor please, now that is getting into a moral standard. We want to register an objection. Every public official takes an oath. I think that is getting rather far afield, sir.

THE COURT: I don't think it makes any difference, Mr. Hill, whether Mr. Murray took an oath or didn't take an oath to support the Constitution of the United States. The question resolves itself into whether or not the school board members are under the process of the Court to require compliance with the Constitution of the United States. In other words, the mere fact that I may have taken an oath to support the Constitution of the United States does not make it incumbent upon me to go out and promote either segregation or desegregation publicly, does it? It makes me comply with the Constitution of the United States; but it does not make me go out and publicly try to interest citizens one way or another.

MR. HILL: I guess that would all be dependent upon your view of your responsibilities of your office, Judge. It would appear to me, if I were a member of a school board, and which it had now been declared to be (tr. 96) the law of the land that we no longer have racial segregation and, having made an oath to defend

the Constitution and laws of the United States, it would seem to me I would feel it was my duty to either do one of two things, either actively promote that view of the law or resign. I agree with you everybody has different senses of duty. But the reason for my question was based on this: As I got from the witness's testimony, he tried to convey the impression that the School Board of the City of Newport News had done all they could under the circumstances, and I think we are entitled to explore that and determine whether or not they have done all they could under the circumstances.

THE COURT: I understand from Mr. Murray's testimony, if I gathered it correctly, that he feels that they are certainly to a great extent under the direction of the State Board of Education, and that the Legislature of Virginia has in effect—and I will use the word, although I am always criticized by the press or otherwise for using some slang expression—but in effect that the Newport News School Board has been hogtied and they can't do anything, by reason of the passage of laws of the State of Virginia and otherwise. In other words, isn't this the answer: that if the school board puts into effect a plan for desegregation, then under (tr. 97) the present existing Virginia laws the first time that a colored child is assigned to a school in which there is a white child in attendance or vice versa, not only that school closes but every school of the same class, if it is elementary or if it is a high school grade, all would close in the city of Newport News. I don't know the names of these schools but there are apparently, I think, five elementary schools which have been heretofore reserved for white children. I will just take the first one that is on the list, and that is Daniel Elementary School. If a Negro child is admitted into

Daniel Elementary School, either by the school board or by the Pupil Placement Board if such legally exists, or by this Court, then in that event not only Daniel Elementary School will automatically close but also Jackson Elementary School, Walter Reed Elementary School, Magruder, Woodrow Wilson, Dunbar, Jefferson, Marshall, and Booker T. Washington Elementary School will all close. Isn't that your interpretation of the Virginia law?

MR. HILL: That is correct.

THE COURT: As it exists now. And it creates a lovely situation. Not only that, it cuts off all the funds from the State level.

Now, then, I understand Mr. Murray's position is: (tr. 98) What can I do? He may properly ask you, "Well, Mr. Hill, what can I do?" He is not required to go out, I don't understand, and so-call preach the gospel one way or the other. I don't think that is his duty. His duty is to comply with the law and he is in a very unfortunate position. The time may come where he or someone else, or some other school board some other place, will have to answer the process of contempt with some court, and that question will have to arise at the proper time. But when a man's hands are literally tied from compliance with the Constitution of the United States, I don't think that he should be reminded of his oath. I sustain the objection.

Q. (By Mr. Hill) Let me come back to one other thing, though. You testified that you and the members of the school board discussed this problem of desegregation, is that correct?

A. That is right.

Q. Was that after the suit was filed?

A. Well, it had been discussed before then. But it was primarily discussed when the suit was brought and, as I stated this morning, the school board then requested an interview with the Governor. I think that the Newport News School Board was the first school system in the State of Virginia that went to see the Governor and asked for a conference with him and with Mr. Howard. And we received (tr 99) that invitation from the Governor and we went up and as fully presented the matter as we knew how and subsequently the General Assembly met in special session and passed these laws with which you are familiar.

Q. Now for the record will you tell us who went to see the Governor from the Newport News situation?

A. Well, Doctor Nelson and all of the white members of the School Board of the City of Newport News.

Q. Inasmuch as you were taking up a discussion of a racial issue, why was the Negro member excluded?

A. Because we knew that he did not in any sense agree with the majority of the board. There would be no occasion to take somebody up there who would object to a procedure that we thought was advisable.

Q. Then what was the procedure that you thought advisable then?

A. To go and see the Governor and ask the Governor to call a special session of the General Assembly and to undertake to enact laws that were within the provinces of the State and would enable the school system to be carried out in Virginia.

Q. In a segregated fashion?

A. Well, not necessarily a segregated fashion, preferably that way from the standpoint of all the members who went

there. But on the basis that was in conformity with the law.

Q. But that was the general spirit of your thinking in (tr. 100) the matter, that you were to preserve segregation, isn't that correct?

A. That is right.

* * *

(tr. 126) * * * JOSEPH CHARLES BIGGINS * * *

CROSS-EXAMINATION BY MR. THOMPSON:

Q. Mr. Biggins, I believe you testified that our public library was operated on a desegregated basis except children, is that correct, sir?

A. Yes, sir.

Q. Do you recall whether or not it was necessary for certain Negro citizens to sue the City of Newport News in order to make those facilities available to them?

A. A suit was entered in that connection, yes, sir.

(tr. 127) Q. After this suit was filed and was about to mature, the City then opened the facility to Negroes, did it not?

A. Well, there was a legal question involved in that as to who would do the opening, whether it would be the library board, which was an independent agency, or the City Council. And the question turned around on that point for a considerable time and finally the library board, as I understand it, on their own volition decided on the present policies that now prevail.

Q. It was necessary to bring legal action in order to get that done. Now, with respect to the equality of recreational facilities, was it not necessary for certain citizens to bring

suit against the City of Newport News to require them to build a recreational facility for Negro children?

A. Well, frankly, I don't recall that.

Q. You were City Manager, sir; you don't recall that the Bernard Watkins, et al, brought suit against the City of Newport News to require them to provide equal recreational facilities for Negroes?

A. No, I don't. I do not recall that.

Q. You don't recall us sitting in your office and talking about agreeing on this case?

A. Perhaps I did. But I do not recall it.

Q. When was the white recreational facility built?

A. It was built during the World War II, as a part of (tr. 128) the Federal Public Works Administration program.

Q. When was the Negro recreational facility built?

A. Oh, long after the white one was built. After the war I think it was.

Q. Some good many years afterwards?

A. That is right.

Q. Mr. Biggins, you also stated that the appropriation for school facilities had been substantially equal. I would like to refresh your memory a little bit on that question. You recall having a conversation with citizens and your Council with respect to the lack of recreational facilities at the Huntington High School?

A. Yes, sir.

Q. I believe the City just recently spent a large sum of money to provide gymnasium facilities for the Newport News High School, did it not?

A. That was the result of the fire and as a result of the fire, and was not intended to be the permanent solution of the gymnasium required at the Newport News High School. My understanding was that there was a shift there, that they had contemplated the present gymnasium being used by girls with the expectation that another gymnasium would be built at a future date for the boys.

Q. Are there any gymnasium facilities provided at the Huntington High School?

(tr. 129) A. Well, under an arrangement between the City and the school authorities we have permitted the high school children to use the recreation building during the class periods and also under an arrangement with the Newport News Shipyard we use the gymnasium facility there which was constructed when the original Huntington High School was built.

Q. But are there any gymnasium facilities at the Huntington High School comparable to those at the Newport News High School?

A. No more than those that I have mentioned.

Q. You also made reference to employment opportunities, Mr. Biggins, with the City. Is it not a fact that you have a quota on the number of persons that may be employed by the Newport News Police Department?

A. You mean the number of Negro employees?

Q. Yes, sir.

A. We have a limitation, yes.

Q. You have a limitation based on race, is it not?

A. That is right.

Q. You also have a limitation on the question of promotion, do you not?

A. No, sir.

Q. Isn't it true, as a matter of fact, that no Negro has ever been promoted in the Police Department?

A. That is true. But that isn't because there is any rule (tr. 130) against it.

Q. Is the failure to promote based on the fact that these people are not competent?

A. The failure to promote is based upon the eligibility of the respective candidates for promotion at the time the promotion is made. That goes for years of service and their qualifications to do the job.

Q. And you have not found any Negroes to meet the qualifications?

A. Not at that time the promotions were made I have not.

Q. You haven't had any trouble between the races in the public library, have you?

A. None that I know of. Never have heard of any.

Q. Both Negroes and whites use it, do they not?

A. Yes.

Q. Have you had any trouble with respect to your public workers, particularly in your health department?

A. None whatever.

Q. They work on an integrated basis there, do they not?

A. Harmoniously, satisfactorily in every way.

Q. They have been so working for years, have they not?

A. Yes; for years.

Q. If these people when they have had contacts with each other have been able to work on a harmonious basis, Mr.

Biggins, upon what do you predicate your theory that there (tr. 131) may be great trouble if the schools are desegregated?

A. I don't recall ever saying there would be great trouble if the schools were desegregated.

* * *